RESERVED

Criminal Revision No.6 of 2003
Smt. Munni and others……. Revisionist

Versus

State of Uttaranchal and another …….. Respondents

Hon'ble M.M.Ghildiyal J.

The revisionists have challenged the order dated 10.12.2002 passed by the In charge Sessions Judge, Dehradun whereby he allowed the revision filed by the complainant Roshan Ara, respondent no.2 and set aside the order dated 10.09.2002 passed by Chief Judicial Magistrate, Dehradun rejecting the application of the complainant-respondent no.2 under section 319 of the Code of Criminal Procedure, 1908 (for the short—"Cr.P.C.").

The facts of the case are that Smt. Roshan Ara got married with Abrar Ahmad on 23.04.1998. It is alleged that after some time Smt. Roshan Ara asked Abrar Ahmad to live with her at her parental house. Abrar Ahmad refused to live with Roshan Ara at her parental house and consequently Smt. Roshan Ara refused to live with Abrar Ahmad at his house. The husband filed a suit for restitution of conjugal rights, which was decreed by the Civil Judge Dehradun on 03.05.2001. It is alleged that the suit filed by Abrar Ahmad annoyed Smt.Roshan Ara and she moved an application before the Chief Judicial Magistrate, Dehradun under section 156(3) Cr.P.C. just to harass the revisionists. On the direction of Chief Judicial Magistrate FIR was registered on 5.1.1999 under sections 420, 406, 498 A of the Indian Penal Code and ¾ Dowry Prohibition Act. The police investigated the matter and submitted chagesheet only against the husband Abrar Ahmad on 11.6.1999 before C.J.M. Dehradun. The C.J.M. took cognizance only against the husband Abrar Ahmad and on the basis of chargesheet the trial commenced. During the trial respondent no.2 Smt. Roshan Ara moved an application on 2.3.2002 under section 319 Cr.P.C. to summon the present revisionists so that they may stand arrayed as accused and face trial. The Chief Judicial Magistrate rejected the application vide its order dated 10.09.2002. The respondent no.2 preferred revision against the order dated 10.9.2002 and the Sessions Judge allowed the revision and directed the revisionists to appear

before the trial court on 8.1.2003. Against this order of Sessions Court the revisionists on various grounds have preferred the present revision.

Heard Sri Ramjee Srivastava learned counsel for the revisionists and learned A.G.A.

The learned counsel for the revisionists has submitted that prior to allowing the revision they were not heard by the revisional court and as such the order is bad in law. He has further submitted that there was no evidence before the learned Sessions Court to allow the application under section 319 Cr.P.C. The learned counsel for the revisionists has placed reliance on the judgment in the case of **Mahesh Chandra Misra and others Vs. State of U.P, and others, reported in 1999 Cri.L.J. 315.** The facts of the present case as narrated above are quite different from the aforesaid case.

Section 319 Cr.P.C. reads as under:-

"Power to proceed against other persons appearing to be guilty of offence,_

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person no being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.
(2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may; require, for the purpose aforesaid.
(3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
(4) Where the court proceeds against any person under sub-section (1) then__
    (a) the proceedings in respect of such person shall be examined afresh, and the witnesses re-heard ;
    (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."
    (c)

Evidence has been defined under section 3 of the Evidnece Act.

Section 3 of the Evidence Act reads as under:-

" (1) All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
(2) All documents produced for the inspection of the court; such documents are called documentary evidence. "

The scope of section 319 Cr.P.C. was considered by the Apex Court in the case of **Ranjeet Singh Vs. State of Punjab, 1998 (7) Supreme Court Cases 149.** In paragraph 10, the court held that sub-section (1) of Section 319 contemplates existence of some evidence appearing in the court of trial wherefrom the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. The court has also clarified that;

"Of course it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers."

The controversy was also dealt by the Apex Court in **Rakesh Vs. State of Haryana, reported in AIR 2001 Supreme Court 2251.** In paragraph 13 Hon'ble Supreme Court while rejecting the plea of revisionist that the term 'evidence' as used in section 319, Criminal Procedure Code would mean evidence which is tested by cross-examination, has held that the question of testing would arise only after addition of the accused. There is no question of cross-examining the witness prior to addition such person as accused. Section does not contemplate an additional state of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. Word "evidence" occurring in sub-section is used in comprehensive and broad sense which would also include the material collected by the investigating officer and the material or which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.

Hon'ble Court has further held that it is not disputed that power u/s 319 Cr.P.C. is to be sparingly used but that would not mean that when a prosecutrix named three persons who were involved in serious crime are not to be added as accused by exercise of such power.

The first submission of the revisionists that there was no evidence before the learned Sessions Judge to allow the application u/s 319 Cr.P.C. cannot be accepted in view of the observations made by Hon'ble Supreme Court in the cases of Ranjit Singh and Rakesh (supra). If the Court prima facie reaches to the conclusion on the basis of material collected by the

Investigating Officer or on the basis of material, which come before the Court, the person not arraigned is also involved in the commission of crime, the court will exercise the power u/s 319 Cr.P.C. From the perusal of impugned order it is clear that the entire record was with the revisionsal court and the court has reached to the conclusion on the basis of material available on the record that the persons involved in the crime should be added as accused. The second submission of the revisionists that they were not heard prior to issuing summons is also not sustainable in view of the aforesaid cases. In the case of Rakesh (supra) the Apex Court has held that the section does not contemplate an addition stage of first summoning the person and giving him opportunity and thereafter decide whether such person is to be added as accused or not but in the case of Rakesh (supra) the trial was committed to session and the application under section 319 Cr.P.C. was moved before Sessions Court. In the preset case the order impugned has been passed by the revisional court exercising jurisdiction of revision and it is well settled law that no order to prejudice of any accused or any other person can be made unless the said accused or the said person has been given an opportunity of being heard. In the present case the learned Sessions Judge without affording an opportunity to other party has allowed the revision.

For the reasons stated above the impugned order dated 10.12.2002 is set aside. The case is remanded back to the learned Sessions Judge to decide the matter aforesaid after being afforded an opportunity of being heard to the revisionists in the interest of justice. The revision is disposed of accordingly.

(M.M.Ghildiyal, J.)

March 28, 2003
MPS